

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:
	:
<b>SEARS HOLDINGS CORPORATION, <i>et al.</i>,</b>	:
	:
<b>Debtors.<sup>1</sup></b>	:
	:
-----X	

**Chapter 11**  
**Case No. 18-23538 (RDD)**  
**(Jointly Administered)**

**STIPULATION, AGREEMENT, AND ORDER APPROVING  
SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This stipulation, agreement, and proposed order (the “**Stipulation, Agreement, and Order**”) is entered into by and among Sears Holdings Corporation (“**Sears Holdings**”), Sears, Roebuck and Co. (together with Sears Holdings, “**Sears**”), BRE 312 Owner LLC (“**BRE 312**”), and 233 S. Wacker LLC (“**233**”). Sears, BRE 312, and 233 collectively are referred to in this Stipulation, Agreement, and Order as the “**Parties**,” and each as a “**Party**.” The Parties hereby stipulate and agree as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

## RECITALS

A. Beginning on October 15, 2018, Sears Holdings, and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. BRE 312 is the owner of that certain building located at 233 S. Wacker Drive, Chicago, Illinois and commonly known as Willis Tower (“**Tower**”), which BRE 312 or its affiliate acquired from 233 through a Sale-Purchase Agreement, dated March 13, 2015.

C. On or about July 1, 2013, Sears and 233 entered into a Settlement Agreement and Mutual Release (as amended) in settlement of a dispute between Sears and 233 regarding their respective ownership interests and rights in a mechanical, three-dimensional sculptural work of art created by Alexander Calder, entitled and commonly known as “The Universe” (the “**Calder Sculpture**”), which was then located in the entrance lobby of the Tower.

D. In or about April 2017, BRE 312 caused the Calder Sculpture to be disassembled, removed from the Tower lobby, transported to a storage facility operated by US Art Co., and stored at said storage facility, where the Calder Sculpture currently remains. In furtherance thereof, BRE 312 entered into certain contracts with third-parties (the “**Contracts**”).

E. On April 30, 2019, BRE 312 filed the *Motion of BRE 312 Owner LLC for Relief from Automatic Stay* (ECF No. 3435) (the “**BRE 312 Motion**”), seeking entry of an order modifying the automatic stay extant in the Debtors’ chapter 11 cases pursuant to section 362 of

the Bankruptcy Code (the “**Automatic Stay**”) to allow BRE 312 to conduct a public auction of the Calder Sculpture without the Debtors’ or 233’s consent.

F. On May 16, 2019, the Debtors filed the *Objection of Debtors to Motion of BRE 312 Owner LLC for Relief from Automatic Stay* (ECF No. 3917) opposing the BRE 312 Motion. On May 16, 2019, 233 filed *233 S. Wacker’s Objection to Motion of BRE 312 Owner LLC for Relief from Automatic Stay* (ECF No. 3906) opposing the BRE 312 Motion.

G. The Parties have agreed, subject to approval by the Bankruptcy Court, to resolve the BRE 312 Motion by entering into the Settlement Agreement and Mutual Release Agreement, dated August 28, 2019 (the “**Settlement Agreement**”) which provides for, *inter alia*, the assignment of the Contracts from BRE 312 to 233 in exchange for certain releases. A copy of the Settlement Agreement is attached hereto as **Exhibit A**.

**NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT HEREBY IS STIPULATED AND AGREED, BY AND AMONG THE PARTIES, THROUGH THE UNDERSIGNED, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:**

1. This Stipulation, Agreement, and Order shall have no force or effect unless and until it is approved by the Bankruptcy Court (the date of such approval shall be the “**Effective Date**”).
2. The Debtors are authorized to enter into the Settlement Agreement and perform the obligations contained therein.
3. Upon the Effective Date, the Settlement Agreement shall be deemed approved and shall become binding upon and enforceable against the Parties.
4. Upon the Effective Date, the BRE 312 Motion shall be deemed withdrawn and all potential arguments set forth therein shall be deemed resolved.

5. Each person who executes this Stipulation, Agreement, and Order on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation, Agreement, and Order on behalf of such Party.

6. This Stipulation, Agreement and Order may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation, Agreement and Order to present any copies, electronic copies, or facsimiles signed by the Parties.

7. Notwithstanding the applicability of Bankruptcy Rule 4001(a)(3), the terms and provisions of this Stipulation, Agreement, and Order shall be effective and enforceable immediately upon the Effective Date, and shall thereafter be binding upon the Parties hereto and their respective affiliates, successors, and assigns.

8. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation, Agreement, and Order.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, this Stipulation, Agreement and Order has been  
executed and delivered as of the day and year first below written.

Dated: September 3, 2019

WEIL, GOTSHAL & MANGES LLP

By: /s/ Jacqueline Marcus  
Jacqueline Marcus  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

*Attorneys for Debtors and Debtors in  
Possession*

Dated: September 3, 2019

GOULD & RATNER LLP

By: /s/ Matthew Olins  
Matthew A. Olins  
222 North LaSalle Street, Suite 300  
Chicago, Illinois 60601  
(312) 236-3003

*Attorneys for 233 S. Wacker LLC*

Dated: September 3, 2019

HAHN LOESER & PARKS LLP

By: /s/ Ian Fisher  
Ian Fisher  
125 S. Wacker Ave., Suite 2900  
Chicago, Illinois 60606  
(312) 637-3000

*Attorneys for BRE 312 Owner LLC*

**SO ORDERED:**

Dated: September 11, 2019  
White Plains, New York

/s/ Robert D. Drain  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**Settlement Agreement**